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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91177036
Party	Plaintiff Nationstar Mortgage LLC
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Opposition No. 91177036

Pursuant to a Board Order of July 23, 2009, the 30-day testimony period was scheduled to begin on September 1, 2009 and close on September 30, 2009. On August 28, 2009, four days prior to the commencement of the testimony period, Opposer timely-filed a Motion for Summary Judgment ("Motion"). This Motion was denied by the Board's Order of September 2, 2009 for not complying Trademark Rule 2.127(a) (indicating that the briefs filed before the Board shall

not exceed 25 pages).¹ In that Order, the Board specifically indicated that the Board was not suspending the proceedings and that the testimony period had opened on September 1, 2009, the day preceding the Board Order, thus precluding Opposer from re-filing a shortened Motion for Summary Judgment prior to commencement of the testimony period. Opposer believes this action was contrary to established Board precedent and procedure and, for the reasons listed below, requests that the Board reconsider its decision to not suspend the proceeding as of the filing of Opposer's Motion for Summary Judgment.

II. THE BOARD'S ACTION IS CONTRARY TO ESTABLISHED PRECEDENT AND PROCEDURE AS CODIFIED IN THE BOARD RULES

In support of its Order Denying Opposer's Motion for Summary Judgment, the Board cites *Cooper Technologies Company v. Denier Electric Co., Inc.* 89 USPQ2d 1478 (TTAB 2008). In *Cooper*, Defendant's Motion for Summary Judgment was also denied for violation of Trademark Rule 2.127(a). *Id.* However, the Board's handling of the trial schedule following the denial of the Motion in *Cooper* is completely opposite to the Board's handling of the trial schedule in the present case.

Specifically, Defendant, Denier Electric Co, Inc., filed a Motion for Summary Judgment on July 15, 2008, one day before the testimony period was scheduled to open. On July 28, 2008, the Board issued an Order suspending the proceeding pursuant to the Board's decision of Defendant's Motion for Summary Judgment. Pursuant to TBMP § 510.03(a), when issuing a Suspension Order, the Board treats the proceeding as having been suspended as of the filing date of the potentially dispositive motion. As such, this Suspension Order was construed as suspending the proceedings from Defendant's July 15, 2008 filing of its Motion for Summary

¹ While the Brief filed in this proceeding was 25 pages, the accompanying Table of Contents and Table of Authorities, which was filed for the convenience of the Board, increased the length to 27 pages.

Judgment. The parties in *Cooper* submitted further briefs on the Motion and, on December 28, 2009, the Board issued an Order denying Defendant's Motion for Summary Judgment for violation of Trademark Rule 2.127(a) and resetting the Trial Schedule for the Plaintiff's testimony period to resume on January 16, 2009 and close on February 15, 2009. As a result of this action, the parties had the Opportunity to file subsequent Motions for Summary Judgment before the testimony period opened.

In the present case, the Board's failure to suspend the proceedings during its consideration of the Motion for Summary Judgment and decision on the Motion following the commencement of the testimony periods, erroneously narrowed the 60-day period between the close of discovery and commencement of testimony by four days (a period during which the Motion for Summary Judgment could have easily been amended to the correct page length had Opposer been promptly notified its filing did not meet the Board requirements). Opposer submits that the Board must follow its precedential action in *Cooper* and not only suspend the proceeding during its consideration of the Motion for Summary Judgment (which has the practical effect of suspending the proceeding as of the date the Motion was filed), but also reset the trial dates (under the assumption that the testimony period would have never commenced if the Board properly suspended the proceedings while considering the Motion for Summary Judgment).

Apart from *Cooper*, CFR § 2.127(d) independently dictates that the Board will suspend a proceeding whenever a potentially dispositive motion has been filed. This did not occur during the Board's review of Opposer's Motion. As such, both the decision in *Cooper* and the Code of Federal Regulations support suspension of the proceeding while the Motion for Summary Judgment is considered.

III. OPPOSER REQUESTS SUSPENSION OF THE CURRENT PROCEEDING FOR GOOD CAUSE

Further, pursuant to TBMP § 510.03(a), Opposer requests that the Board suspend the proceedings pursuant to its review of the present Motion for Reconsideration. This Motion to Suspend is for good cause. Specifically, the Board has the authority to suspend the proceedings when the parties file a motion that is potentially dispositive of the proceedings. *Id.* Opposer's Motion for Reconsideration, if granted, effectively provides Opposer with additional time to submit a brief accompanying its Motion for Summary Judgment which complies with the requirements of Trademark Rule 2.127(a). In the regard, Opposer has simultaneously re-filed a corrected version of its Motion for Summary Judgment² for the Board's consideration. Opposer submits that this Motion should be viewed as timely filed before the commencement of the testimony phase of discovery.

IV. CONCLUSION

For the reasons listed above, Opposer respectfully requests that the Board reconsider its decision to not suspend the proceeding pursuant to its review of Opposer's Motion for Summary Judgment. Opposer submits that the Board should follow established precedent and Board procedure and issue an Order retroactively suspending the proceedings as of the date of filing of Opposer's Motion for Summary Judgment and resetting the testimony dates. In addition, Opposer requests that the Board suspend the proceedings while it considers the merits of Opposer's Motion for Reconsideration.

² This corrected Motion does not contain the Table of Authorities and Table of Contents. Apart from this deletion to comply with the twenty-five page limit as set forth in Trademark Rule 2.127(a), the Motion for Summary Judgment is otherwise unchanged.

Respectfully submitted,

NATIONSTAR MORTGAGE LLC

A handwritten signature in cursive script, reading "Jennifer L. Williston". The signature is written in dark ink and is positioned above the printed name and address.

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Date: September 4, 2009

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing OPPOSER'S MOTION FOR RECONSIDERATION AND SUSPENSION OF PROCEEDINGS was served this 4th day of September, 2009 by first-class mail, postage prepaid, on:

Patrick I. Rea, Esquire
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Jean Bayou